

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UBIQUITI NETWORKS, INC., )  
 )  
Plaintiff, )  
 )  
v. ) No. 18 CV 05369  
 )  
CAMBIUM NETWORKS, INC., et al., ) Chicago, Illinois  
 ) June 22, 2020  
Defendants. ) 9:30 a.m.

TRANSCRIPT OF TELEPHONIC PROCEEDINGS

BEFORE THE HONORABLE GARY S. FEINERMAN

APPEARANCES TELEPHONICALLY:

For the Plaintiff: FOX SWIBEL LEVIN & CARROLL, LLP  
BY: MR. DAVID E. KOROPP  
MR. ERIK J. IVES  
MR. STEVEN J. REYNOLDS  
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For the Defendants: BAKER BOTTS, LLP  
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1 (Proceedings heard telephonically:)

2 THE CLERK: 18 C 5369, Ubiquiti Networks versus  
3 Cambium Networks.

4 MR. KOROPP: Good morning, your Honor. Dave Koropp  
5 here for Ubiquiti. And I'm here with my colleagues Erik Ives  
6 and Steven Reynolds.

7 MR. SWENSON: Good morning, your Honor. Jon Swenson  
8 on behalf of the defendant.

9 THE COURT: And anyone else from the defendant?

10 All right. So thank you for the status report. I  
11 think the status report might have given me more than I needed  
12 to know but maybe not. So let me ask this question: Does  
13 each side have what it needs in order to prepare the  
14 settlement demand and the settlement offer and to go forward  
15 with the settlement conference?

16 Plaintiff?

17 MR. KOROPP: And, Erik, why don't you take that.

18 MR. IVES: Thank you. Good morning, your Honor.  
19 Yes, your Honor. For -- as stated in the status report, for  
20 that very limited purpose, the meet and confer satisfied our  
21 abilities to provide that information to our client for that  
22 settlement demand letter, but for the reasons stated in the  
23 status report, we would request that the Court rule upon the  
24 motion to de-designate in full and grant the relief requested.

25 THE COURT: Okay. Defendant, do you have everything

1     you need?

2                 MR. SWENSON: Your Honor, the one piece that we still  
3     don't have that we need in order to respond to the settlement  
4     demand likely -- obviously, we haven't seen it -- is access to  
5     the 18 files. We're still working through that trying to  
6     figure out an appropriate location to access those files. So  
7     that would be the one critical piece from defendants' point of  
8     view.

9                 THE COURT: Okay. And where do you stand on getting  
10    access to those files?

11                MR. SWENSON: So, your Honor, we undertook a  
12    modification of the protective order whereby the files could  
13    be hosted at a law firm of the producing party near the expert  
14    that's inspecting the files. Our expert who we want to use is  
15    in Las Vegas. And we've been trying to get confirmation from  
16    plaintiff as to whether or not they're able to produce the  
17    files in Las Vegas or the Las Vegas area.

18                We haven't gotten final word from them on that. Once  
19    we get that, we'll be able to move forward.

20                THE COURT: Okay. Plaintiff, what are your thoughts  
21    on that?

22                MR. KOROPP: Judge Feinerman, Steve Reynolds has  
23    taken the lead for plaintiffs on the source code issue, and so  
24    I'll turn it over to him on that if that pleases the Court.

25                THE COURT: That's fine.

1           MR. REYNOLDS: Your Honor, the short answer is we're  
2 working on it. Defendants initially identified Palo Alto as  
3 their preferred location. We got a source code computer out  
4 there, made all the arrangements. We're ready to go. They  
5 now -- they then told us they would like to do it in Las  
6 Vegas.

7           We advised that there are some logistical issues  
8 there and asked that they consider Los Angeles as Los Angeles  
9 is nearby. And we're understanding that they were going to  
10 get back to us on that. But in short, the discussions are  
11 moving forward between the parties.

12           THE COURT: Okay. How long do you think it will take  
13 for you to determine how and where the 18 files will be  
14 disclosed, and how long do you think it will take for you to  
15 actually disclose those files to the defendants' expert?

16           MR. REYNOLDS: Your Honor, this is Steve Reynolds  
17 again.

18           They're ready to go in Palo Alto right now with the  
19 exception that defendants on Friday said they would like two  
20 more pieces of software on the review computer which I think  
21 we can accommodate. If they accept Los Angeles, probably just  
22 a few days, just the time it takes to ship the computer down  
23 there.

24           If they stick with Las Vegas, Las Vegas is just an  
25 interesting location because there are not a lot of major law

1 firms, and we haven't been able to identify one that has a  
2 relationship with our client down there. So Las Vegas may  
3 take a little bit longer.

4 THE COURT: Okay.

5 MR. SWENSON: Your Honor, if I may make a proposal.  
6 You know, obviously --

7 THE COURT: And you are who?

8 MR. SWENSON: Sorry. This is Jon Swenson for the  
9 defendants.

10 THE COURT: Okay. Go ahead.

11 MR. SWENSON: If I may make a proposal because  
12 obviously, we want to move this along as quickly as possible  
13 and get access to these 18 files so that we can, you know,  
14 move through the settlement demand process. You know, we're  
15 willing to have an interim expert at least take a look at the  
16 files in Palo Alto. We could start that tomorrow.

17 And we can at least do an initial analysis with the  
18 caveat that, you know, plaintiff continue in good faith, maybe  
19 within the next three to five days, to get back to us as to  
20 whether or not we can actually accomplish the bulk of the  
21 review in the Las Vegas area.

22 THE COURT: Okay. Why don't you -- why don't you  
23 guys discuss this offline.

24 Let's set this, Jackie, for a status hearing during  
25 the week of July 6th.

1 THE CLERK: One moment.

2 How about July 9th at 9:30 a.m.

3 THE COURT: And then let me ask the parties to file a  
4 status report by July 3rd. Just bring me up to speed on this  
5 18 files issue and letting me know whether the parties have  
6 either already disclosed them or have a plan to disclose them  
7 and, in particular, whether the defendants have what they need  
8 from the 18 files in order to go forward with the settlement  
9 process.

10 And if you figure all this out beforehand, just file  
11 a status report when you figure it all out because then I can  
12 tell Judge -- Magistrate Judge Cummings that he's good to go  
13 on the settlement process, and he can get started as soon as  
14 possible on that. All right?

15 MR. REYNOLDS: Your Honor, this is Steve Reynolds.  
16 If I just might make two notes for the record on that. I  
17 think that we can proceed as Mr. Swenson suggests. We would  
18 need their in-house expert to sign on the protective order.  
19 We do have to get those other two files installed on the  
20 computer which sometimes can create a logistic issue.

21 So, you know, if I said tomorrow, I don't know that  
22 we can do it tomorrow but -- in Palo Alto, but certainly  
23 within the next couple of days. I don't see an issue there.

24 MR. SWENSON: Your Honor, Jon Swenson here. You  
25 know, Judge Cummings' order regarding the settlement process

1 ordered Ubiquiti to provide a settlement demand within 14 days  
2 after the Court's ruling on the de-designation motion. Given  
3 that Ubiquiti now has what it needs to provide its settlement  
4 demand and has for since, I believe, last Wednesday, we'd ask  
5 that at least that process go forward so that there's no delay  
6 in terms of getting that initial settlement demand out.

7 MR. IVES: And, your Honor, this is Erik Ives for  
8 Ubiquiti. We had fully planned to move forward with that as  
9 quickly as possible with the caveat that the 14 days -- we  
10 didn't receive the documents until Friday and were not able to  
11 share those with our client until Friday. But that said, we  
12 had actually hoped to get it, pending feedback from our client  
13 on the documents and the content of the letter, to Judge  
14 Cummings as soon as possible well within that 14-day period.

15 THE COURT: Okay. So I guess, so let's just -- that  
16 sounds great. So why don't we just hold on to that status  
17 date and to the status report just so I can be assured that  
18 everything is proceeding apace. But what I'll do is I'll just  
19 let Judge Cummings know that the plaintiff at least has what  
20 it needs to do a settlement demand and, therefore, his process  
21 can go forward if he's comfortable doing so without my having  
22 ruled on the motion in its entirety.

23 All right? Is that all right with the parties?

24 MR. SWENSON: Yes, for defendant, your Honor. That's  
25 perfectly acceptable. Thank you.

1 MR. KOROPP: Yes.

2 THE COURT: All right. Anything further you'd like  
3 to address?

4 MR. SWENSON: Not from defendants, your Honor.

5 MR. IVES: Your Honor, this is Erik Ives. There were  
6 two issues that we would still like to address. One is the  
7 overarching nature of your Honor's ruling on the AEO motion  
8 because as listed in the status report and just as a matter of  
9 practicality, the parties need to continue proceeding with the  
10 case as we don't know when the settlement conference will, in  
11 fact, be scheduled.

12 And certainly, the timeframe that your Honor set,  
13 even the extended deadline set after the last hearing  
14 (inaudible) that the parties will be moving forward with  
15 discovery in the case as a whole. And for all the reasons  
16 listed in our motion and highlighted by the recent process,  
17 there -- it is absolutely the case that over-designation has  
18 occurred and that it is highly prejudicial to Ubiquiti as  
19 we're moving forward with discovery.

20 And so we would ask that the Court rule on that  
21 motion although from your Honor's comments, I take it that  
22 your Honor was not intending to do so today.

23 THE COURT: No, I'm not going to do so before the  
24 settlement conference just because if you were my only case or  
25 if you were one of ten cases I had then, yes, I certainly



1 would have the time to devote to it, and I would give you what  
2 might end up being an advisory ruling on that. But I have  
3 probably 300 cases that are all deserving of attention, and if  
4 a case is going to settle -- well, let me step back.

5           The reason why I was so focused on what do you need  
6 to go forward with the settlement conference was because if  
7 you're going to settle the case, then we don't have to devote  
8 further party resources towards resolving this motion and we  
9 don't have to devote -- I don't have to devote my resources,  
10 my limited time to resolve that motion.

11           So I want the parties to have what they need to go  
12 forward with the settlement conference. And if the case  
13 settles, then the motion is denied as moot as to the  
14 designations. And if the case doesn't settle, then  
15 absolutely, I'll get you a ruling on that motion as soon as  
16 I'm able. And so, therefore, if I had nothing else to do and  
17 was, like, playing golf or -- which I don't do anyway or  
18 working on your motion, I would rule on your motion.

19           But I have hundreds of other cases clamoring for my  
20 attention, and it doesn't make sense from a judicial economy  
21 standpoint to rule on a motion that could very well be mooted.  
22 So you correctly inferred or deduced from my comments that I  
23 won't be ruling on the motion before the settlement conference.

24           That's not an invitation to the defendants to drag  
25 things out because if you start dragging things out, and I

1 don't anticipate they will, but if they start dragging things  
2 out, that changes the calculus. And if the case doesn't  
3 settle, obviously that motion will rise to the top of my list,  
4 and I'll rule on it as soon as I can. All right.

5 MR. IVES: Understood, your Honor. The second  
6 issue -- and we do very much appreciate your time and  
7 attention on this matter in assisting the parties.

8 The second issue was one that we briefly previewed  
9 for you last status hearing but unfortunately, if you might  
10 recall, the parties had started dropping off the line and so  
11 we did not end up having an opportunity to discuss it with  
12 your Honor.

13 THE COURT: Sure.

14 MR. IVES: And that is a mutual date for production  
15 of a privilege log. Defendants have taken the position that  
16 they don't believe that a privilege log needs to be submitted  
17 until the end of the case or the end of fact discovery,  
18 sometime near the end.

19 It's our position that we need to receive a privilege  
20 log so that the parties can evaluate those claims of  
21 privilege, and to the extent that any privilege issues need to  
22 be dealt with that they're dealt with prior to fact witness  
23 depositions occurring because we certainly don't want to be in  
24 a position where we have to reopen fact witness depositions.  
25 And so we asked for a reasonable date sometime in mid to late

1 July. That was originally asked in June.

2 We're not trying to be overly burdensome here, but  
3 defendants made their production in March. So the documents,  
4 to the extent they're being withheld on privilege, were long  
5 ago identified. And to be frank, we have concerns as to the  
6 manner in which they identified them given how overbroad their  
7 AEO designations were done.

8 And so we do want a mutual date for a privilege log  
9 to be exchanged between the parties as to existing  
10 productions. And obviously, the parties would be under a duty  
11 to supplement reasonably moving forward, but that initial date  
12 is something that the parties are at an impasse on it, and  
13 we'd like the guidance of the Court to the extent you're able  
14 to give it to us.

15 THE COURT: Sure. Defendants, what are your  
16 thoughts?

17 MR. SWENSON: Your Honor, if I may, that was a --  
18 this is Jon Swenson for defendants.

19 Our position has always been that the parties should  
20 have a mutual date for exchange of privilege logs once  
21 document production is substantially complete. We're not  
22 looking to wait until the end of fact discovery. But the  
23 matter of fact here is that Ubiquiti, we just figured out over  
24 the last couple of weeks, is now claiming that its document  
25 production is complete at 84 documents.

1           And it just hasn't complied with the mandatory  
2     initial disclosures. It hasn't provided information regarding  
3     the development of the accused firmware, how it was developed,  
4     how it related to open source, what open source was in there.  
5     They admit open source was in there, how that was developed.  
6     All those documents that we laid out in our mandatory initial  
7     disclosures that were unobjected to, Ubiquiti hasn't produced.

8           So its production and the 84 documents, I think what  
9     we need to have happen is to have Ubiquiti come into  
10    compliance with the mandatory initial disclosures, produce  
11    core documents related to this case. And once that production  
12    is complete and Ubiquiti has done its investigation and  
13    produced its, you know, 62,000 documents like defendants did,  
14    then we can agree on a date for mutual exchange of privilege  
15    logs.

16           Frankly, I think the same thing should apply to a  
17    discussion of appropriate confidentiality designations because  
18    I think when we're in a position where Ubiquiti has complied  
19    with its obligations and done its production, it's probably  
20    not going to be lobbing, you know, stones from its glass  
21    house, you know, at defendant.

22           So I think that's a really serious issue that we need  
23    to work through. And we've put the -- some of that in our  
24    status report. But that's a gating issue to both the  
25    privilege log and I think the confidentiality issue as well.

1 THE COURT: Okay. Well, I mean, it sounds like if  
2 the case goes to a settlement conference and it doesn't  
3 settle, the defendants will be moving to compel the plaintiff  
4 to produce the documents that the defendants believe the  
5 plaintiff has not produced. Is that correct?

6 MR. SWENSON: I think that's correct. I think it's  
7 beyond that as well because, you know, plaintiff had  
8 obligations under the MIDP to produce core documents, and they  
9 just didn't do it. So, you know, we're trying to focus on  
10 resolving the case, working through the settlement process and  
11 not running up expensive discovery disputes.

12 But I think your Honor is correct, is that if we get  
13 through the settlement process and we don't resolve the case,  
14 we're going to have to move forward with some sort of motion  
15 practice, unfortunately.

16 THE COURT: That's fine. Well, let me give the  
17 privilege log issue some thought. And I'll address it in the  
18 order that I'll enter today.

19 Anything further?

20 MR. IVES: Your Honor, this is Erik Ives. Only in 20  
21 seconds, the MIDP issue they're raising was raised for the  
22 first time, I believe, last week. It is not a ripe issue.  
23 And, in fact, we have responded to every RFP that they issued  
24 and have produced all responsive documents that we identified  
25 in those RFPs.

1           The issue is simply that in a supplemental disclosure  
2 issued on the same day as their RFPs, they're essentially  
3 claiming that their identification of universe of relevant  
4 documents, somehow that required us to produce, not in  
5 response to the RFPs they issued on the same day but to  
6 essentially those very issues. It is not a ripe issue. We  
7 disagree with the reading of it, but we're working to try to  
8 resolve it with them. So it's just simply not ripe, and it  
9 should not impact when the parties will have a mutual date for  
10 producing a privilege log. I mean, that date is mutual.

11           And essentially, with confidentiality privilege,  
12 every time that we ask them for something that's reasonably  
13 required by the law, they lash out on us on a new issue. And  
14 all we're trying to do is not run up costs but to continue to  
15 move the case forward as it needs to to meet existing  
16 deadlines. And so that is our goal, is to make sure that  
17 we're not in a position where we are not able to meet your  
18 Honor's deadlines because we essentially went to a standstill  
19 on discovery.

20           THE COURT: Okay. I --

21           MR. SWENSON: Your Honor?

22           THE COURT: Go ahead.

23           MR. SWENSON: Your Honor, just briefly, the purpose  
24 of the MIDP was to eliminate the process for costly document  
25 productions. And it's simply not credible to say that 84

1 documents is all the documents related to the core issues in  
2 this case. And yes, we did issue some targeted RFPs related  
3 to the 18 files because we wanted to focus particularly on  
4 that. That doesn't relieve them of their obligations to  
5 respond to the information under the MIDP.

6 And, in fact, our disclosures that we put out there  
7 on the deadline for providing the disclosures, they never  
8 objected to that, so we in good faith thought that they were  
9 collecting and producing that information to us.

10 THE COURT: Okay. I -- you know, this is -- again, I  
11 don't have a motion in front of me. 84 documents does seem a  
12 bit light in a case like this, but I don't know. I mean, I --  
13 without knowing anything more, it seems a bit light, but who  
14 knows. Maybe there's an explanation. And if the case doesn't  
15 settle, I'm sure this issue will be teed up in front of me and  
16 both sides will be able to give me their views, and I'll be  
17 able to make a fully informed decision.

18 Anything further?

19 MR. SWENSON: Your Honor, we would just ask that we  
20 not have to issue requests for production covering all the  
21 MIDP categories. You know, those should be treated as areas  
22 where they need to investigate and produce information unless  
23 we receive specific objection from them. Right now, what  
24 we've received from them is they don't have to comply with the  
25 MIDPs, those don't control. And we don't think that's the

1 process.

2 THE COURT: Okay.

3 MR. IVES: Your --

4 THE COURT: You know what, you guys are fighting  
5 about a motion that hasn't been filed yet. So it's not  
6 productive at this point. I said, 84 documents seems kind of  
7 light if, in fact, that was the full extent of the plaintiffs'  
8 MIDP document production. That said, who knows. Maybe  
9 there's an explanation, I don't know, and this can all be  
10 worked out.

11 If you want to file your motion now, file your motion  
12 now. If you want to wait until after the settlement  
13 conference, wait until after the settlement conference. It's  
14 completely up to you. I just don't think it's productive to  
15 discuss it any further at this point.

16 Anything else?

17 MR. IVES: Thank you, your Honor.

18 THE COURT: Anything else?

19 MR. KOROPP: No, your Honor. And we just thank you  
20 for your time today.

21 THE COURT: Okay. Thanks.

22 MR. SWENSON: Thank you.

23 (Proceedings adjourned at 9:52 a.m.)

24

25



C E R T I F I C A T E

I, Judith A. Walsh, do hereby certify that the foregoing is a complete, true, and accurate transcript of the telephonic proceedings had in the above-entitled case before the Honorable GARY S. FEINERMAN, one of the judges of said court, at Chicago, Illinois, on June 22, 2020.

/s/ Judith A. Walsh, CSR, RDR, F/CRR July 27, 2020

Official Court Reporter

United States District Court

Northern District of Illinois

Eastern Division